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PROSECUTING ATTORNEYS CONTRIBUTING DATA.

Alameda County, Oakland, California
J. Frank Coakley, District Attorney
Robert H. McCreary, Assistant District Attorney

Sacramento County, Sacramento, California
John M. Price, District Attorney

Hartford County, Hartford, Connecticut
John D. LaBelle, State's Attorney

Eleventh Judicial District (Dade County), Miami, Florida
Richard E. Gerstein, State's Attorney

Atlanta Judicial Circuit (Fulton County), Atlanta, Georgia
Lewis R. Slaton, Solicitor General

Orleans Parish, New Orleans, Louisiana
Jim Garrison, District Attorney
Charles R. Ward, Chief Assistant District Attorney

City of Baltimore, Baltimore, Maryland
Charles E. Moylan, Jr., State's Attorney
John D. Hackett, Assistant State's Attorney

Wayne County, Detroit, Michigan
Samuel H. Olsen, Prosecuting Attorney
Samuel J. Torina, Assistant Prosecuting Attorney

Hennepin County, Minneapolis, Minnesota
George M. Scott, County Attorney
Donald J. Omodt, Assistant County Attorney

Douglas County, Omaha, Nebraska
Donald L. Knowles, County Attorney

Essex County, Newark, New Jersey
Brendan T. Byrne, County Prosecutor
Barry H. Evenchick, Assistant County Prosecutor

Kings County, Brooklyn, New York
Aaron Koota, District Attorney
Elliott Golden, Chief Assistant District Attorney
Ronald B. Bianchi, Assistant District Attorney

TABLE I.

CONFESSIONS: NATIONAL RELEVANCE
REVIEW OF ALL 1961 CASES.

Jurisdiction	Confessions/ Pleas Of Guilty	Confessions/ Trial Convictions	Confessions/ Trials	Confessions/ Convictions	Confessions/ Prosecutions	Confessions/ Dispositions
California, Sacramento County (Sacramento)	45.3% (351/774)	64.7% (55/88)	57% (63/110)	47% (406/859)	46.9% (414/884)	—
Florida, Eleventh Judicial Circuit[1] (Dade County, Miami)	—	—	—	43.5% (750/1722)	—	35.8% (791/2206)
Maryland, City of Baltimore[1]	29% (61/210)	37% (112/300)	32% (137/428)	33.9% (173/510)	30.9% (198/638)	—
Michigan, Wayne County (Detroit)	—	—	—	—	60.8% (879/1445)	—
New York, Westchester County (White Plains)	84.6% (608/718)	71% (5/7)	80% (8/10)	82% (613/725)	84.7% (616/728)	83.8% (322/742)
Ohio, Hamilton County (Cincinnati)	—	—	—	—	—	64.4% (667/1035)
Ohio, Franklin County (Columbus)	—	—	—	82% (731/891)	—	—
Ohio, Montgomery County (Dayton)	76.8% (483/629)	43.3% (13/30)	38% (19/50)	75% (496/659)	73.8% (502/680)	—

Note: Figures in brackets refer to number of cases which have a record of confessions over the number of case files examined which equals the percentage given in each category.

1. It is clear that the records in these jurisdictions are not complete, in that in many instances the record did not indicate whether a confession (statement) was involved or not.

CONFESSIONS: NATIONAL RELEVANCE
REVIEW OF 1961 CASES BASED PARTLY UPON SAMPLING

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CONFESSIONS: NATIONAL RELEVANCE
REVIEW OF 1961 CASES BASED PARTLY UPON SAMPLING

Jurisdiction	Confessions/ Pleas Of Guilty	Confessions/ Trial Convictions	Confessions/ Trials	Confessions/ Convictions	Confessions/ Prosecutions	Confessions/ Dispositions
California,						
Alameda County[1] (Oakland)	60% (21/35)	—	—	—	—	—
Connecticut,						
Hartford County[2] (Hartford)	53.8% (7/13)	9.5% (2/21)	—	—	—	—
Georgia,						
Atlanta Judicial Circuit[3] (Fulton County, Atlanta)	52.7% (69/131)	—	—	—	47% (71/150)	—
Louisiana,						
Parish of Orleans[4] (New Orleans)	78.4% (22/28)	—	47.8% (22/46)	—	—	—
Minnesota,						
Hennepin County[5] (Minneapolis)	86.7% (26/30)	80.7% (21/26)	80% (28/35)	—	—	—
New Jersey,						
Essex County[6] (Newark)	93% (55/59)	62% (18/29)	53.6% (22/41)	82.9% (73/88)	77% (77/100)	—
New York,						
Kings County[7] (Brooklyn)	47% (51/108)	0% (0/8)	11.8% (2/17)	44% (51/116)	42.4% (53/125)	—
New York,						
New York County[8] (New York)	50% (139/277)	24.4% (23/94)	19% (23/120)	—	—	—
Pennsylvania,						
Philadelphia County[9] (Philadelphia)	—	—	—	50% (189/376)	—	—

Note: Figures in brackets refer to number of cases which have a record of confessions over the number of case files examined which equals the percentage given in each category.

1. Examination of every 25th case.
2. Pleas of Guilty—examination of every 25th case; Trials—all cases checked.
3. Sampling of 10% of all cases prosecuted.
4. Pleas of Guilty—examination of every 25th case; Trials—all cases checked.
5. Pleas of Guilty—sampling of 1 out of 20 cases; Trials—sampling of 35 cases of 65 cases tried.
6. Based on random sampling of 100 cases.
7. Every 25th case checked.
8. Pleas of Guilty—review of every 25th case where pleas came before trial and of all pleas given after trial had commenced; Trials—review of all cases.
9. Review of all cases in which defendants

TABLE III.

CONFESSIONS: NATIONAL RELEVANCE OF PLEAS AND TRIALS—1961.

COMBINED TABLE—DATA OBTAINED BY COMPLETE CHECK OR BY SAMPLING.

Jurisdiction	Confessions/ Pleas of Guilty	Confessions/ Trial Convictions	Confessions/ Trials
California, Sacramento County (Sacramento)	45.3%	64.7%	57%
Maryland, City of Baltimore	29%	37%	32%
Minnesota, Hennepin County (Minneapolis)	86.7%	80.7%	80%
New Jersey, Essex County (Newark)	93%	62%	53.6%
New York, Kings County (Brooklyn)	47%	0%	11.8%
New York, New York County (New York)	50%	24.4%	19%
New York, Westchester County (White Plains)	84.6%	71%	80%
Ohio, Montgomery County (Dayton)	76.8%	43.3%	38%

Note: California, Maryland, New York (Westchester County), and Ohio based upon review of all cases. New York (New York County)—trial convictions and trials based upon review of all cases. All other percentages based upon sampling.

California.

ALAMEDA COUNTY, Oakland
J. Frank Coakley, District Attorney

Data compiled by Robert H. McCreary,
Assistant District Attorney

1960 County Population: 908,209

In "Crime in California," 1961, as compiled in the State's Bureau of Criminal Statistics, the figures for the County of Alameda were: felony filings on defendants—1258; felony defendants—1304; convicted—1229; pleaded guilty—1043.

Examining the Registers of Criminal Actions for the County (County Clerk No. 32134 to and including County Clerk No. 33271) for the year 1961, Mr. McCreary found 888 cases in which guilty pleas were entered. Of the 888 cases, every 25th case was reviewed for a total of 35 cases specifically considered. The check of these cases revealed that extrajudicial confessions were involved in 21 cases; no extrajudicial confessions were involved in 11 cases; no data was available on the confession issue in 3 cases. Thus, 60% of the cases wherein pleas of guilty were registered also contained verifiable extrajudicial confessions.

No data was to be had in the records or files concerning the use or nonuse of confessions at trial, except in the very few cases where appeal transcripts were prepared.

California.

SACRAMENTO COUNTY, Sacramento
John M. Price, District Attorney

Data compiled under the direction of
John M. Price, District Attorney

1960 County Population: 502,778

1961: 884 FELONY PROSECUTIONS
Based on a Review of All Felony Prosecutions

	Pleas of Guilty	Trials[1]	Total
Convictions	774	85	859
Confessions	351	55[2]	406
Relativity: $\frac{\text{Confessions}}{\text{Convictions}}$	45.3%	64.7%	47%
Relativity: $\frac{\text{Confessions } 414}{\text{Prosecutions } 884}$	—	—	46.9%
Relativity: $\frac{\text{Confessions } 63}{\text{Trials } 110}$	—	57%	—

1. Total tried: 110.
2. Total confessions involved in 110 trials: 63, of which 3 found not guilty by reason of insanity.

In 1961 there were 965 felony dispositions, but no data was available on confessions in the total dispositions other than by trials or pleas of guilty (e. g., nolle prosequi).

There remain under the control of the penal authorities 15 defendants who were convicted at trials (as distinguished from pleas of guilty) in which their statements were a factor. Resumes of these cases are as follows:

Superior Court #24754—James Vienni:

Convicted of three counts of armed robbery after trial by jury. An exculpatory-type statement was used at trial to impeach defendant as it varied from his sworn testimony. Conviction was the result of a combination of circumstances: (1) Identification of defendant by four eyewitnesses; (2) Fact defendant had prior felony convictions; (3) Use of district attorney's statement as impeachment.

Superior Court #25294—William Henry Houghton, age 35:

Convicted of assault with intent to commit murder, armed robbery and ex-convict with a gun. Sentenced January 17, 1962; all counts consecutive, and adjudged a habitual criminal. Defendant asked three people to accompany him in a holdup, showed them the gun he intended to use and testified for them; each refused. When arrested defendant made statement that he is fighting for 15 to 20 years of his life—that he had no one to blame but himself, that he was willing to pay for his actions and that he knew he had to.

Superior Court #25356—Robert O. Dingman, age 29:

Convicted of two counts of second-degree burglary. Sentenced to state prison on February 16, 1962. Defendant did not take the stand; however, his confession was introduced against him.

Superior Court #25301—Ervin Lewis Zander, age 19:

Defendant, in conjunction with two others who pleaded guilty, committed an armed robbery. He pleaded not guilty, was convicted on January 30, 1962, and sentenced to California Youth Authority on February 21, 1962. His confession was used against him at trial.

Superior Court #25326—Arthur Davis, age 55:

Convicted of first-degree robbery. Charged November 21, 1961; jury trial; sentenced to state prison February 14, 1962. Defendant, an on-duty policeman in a small town, was look-out while Freeman and DeLouize robbed bar. During investigation Freeman confessed, naming Davis. Had suspicion focused on Davis? By use of electronic device (. . .), made recording of damaging admissions by Davis relative to his part in robbery. This statement vital to conviction as corroboration of Freeman's testimony. Davis now on parole.

Superior Court #25047—Sidney Lewis, age 39:

Convicted of burglary, second; sentenced to one to 15 years on September 27, 1961; affirmed on appeal. No eyewitnesses. Defendant walked into the Los Angeles Sheriff's office and confessed the crime to two officers. Confession used as only means of connecting him to crime. Defendant admitting smashing a jewelry store window and stealing miscellaneous jewelry.

Superior Court #24935—Kenton Dale McHenry, age 32:

Convicted of four counts of incest and one count of lewd and lascivious conduct with a child under the age of 14; sentenced to one to 50 years on each count of incest and one year to life on the child molest. Two eyewitnesses. Admission that one day his wife "came home too soon" was closest thing to a confession in the case. Sentence was imposed August 11, 1961.

Superior Court #24918—Joseph C. Davis, age 34:

Convicted of first-degree robbery; sentenced to five years to life on August 23, 1961. Eyewitnesses, plus defendant confessed to aiding and abetting in the robbery of a service station attendant.

Superior Court #25177—Martha Seach, age 37:

Convicted of attempted burglary, placed on felony probation. No confessions or admissions, but demonstrably false and evasive self-exculpatory statements were introduced against her.

Superior Court #25176—Billy Tildon Brown, age 27:

Convicted of forcible rape; sentenced to three years to life on November 29, 1961. No confession or admissions, but formal statement used to impeach defendant on basis of prior inconsistent statements as to whereabouts at particular times.

Superior Court #25373—William J. Songs, age 49:

Convicted by jury of robbery, first degree, on February 9, 1962. Sentenced to state prison for five years to life on March 1, 1962. Convicted on testimony of eyewitness-victim. Made statement denying crime. Defendant's testimony at trial was, in several material respects, inconsistent with his statement. Statement was, therefore, used on cross-examination of defendant for impeachment.

Superior Court #25415—Jesse Allen, age 48:

Convicted by jury of murder, second degree, on March 14, 1962. Sentenced to state prison for five years to life on March 19, 1962. Made statement confessing shooting an acquaintance in the course of an argument in a pool hall. Convicted upon eyewitness testimony and confession.

Superior Court #25034—Harold Pearl, age 33:

Convicted by jury October 26, 1961, of murder, second degree, and abortion. Sentenced to state prison on November 7, 1961, for five years to life and six months to five years concurrent. There were no eyewitnesses to the

crimes, and defendant was convicted solely on circumstantial evidence. He gave an extrajudicial statement denying involvement. This statement contained demonstrably false statements plus admissions showing a consciousness of guilt. Defendant declined to testify in his own behalf because of probability of damaging cross-examination on the basis of his extrajudicial statement.

Superior Court #25034—Robert Kennedy, age 41:

Convicted by jury October 26, 1961, of murder, second degree, and abortion. Sentenced to state prison on November 7, 1961, for five years to life and six months to five years concurrent. There were no eyewitnesses to the crimes, and defendant was convicted solely on circumstantial evidence. He gave an extrajudicial statement denying involvement. This statement contained demonstrably false statements plus admissions showing a consciousness of guilt. Defendant declined to testify in his own behalf because of probability of damaging cross-examination on the basis of his extrajudicial statement.

Superior Court #24438—Edward Potter, age 34:

Convicted by jury of lewd and lascivious conduct with a child under the age of 14 years (violation of Section 288 of the Penal Code). On January 6, 1961, he was convicted and on January 27, 1961, sentenced to the state prison for a term of one year to life. Defendant convicted on testimony of the victim, age 13, plus his extrajudicial confession.

Connecticut.

HARTFORD COUNTY, Hartford
John D. LaBelle, State's Attorney

Data compiled by John D. LaBelle,
State's Attorney

1960 County Population: 689,555

There were 593 defendants docketed on felony charges for the calendar year 1961.

1961: 319 PROSECUTIONS.

Based on Sampling of Pleas of Guilty and Review of All Trials.

	Pleas of Guilty	Trials[1]
Convictions	13	21
Confessions	7	2
Relativity: Confessions / Convictions	53.8%[2]	9.5%

1. Total tried 33 of which 21 were convicted; 6 were acquitted; 4 were found not guilty by reason of insanity and committed to state mental institution; 2 were found guilty of lesser charges.

2. Based on an examination of approximately every 25th case, for a total of 13 files checked. A review of these files disclosed that in 7 cases extrajudicial confessions had been made by the defendants.

There remain under the control of penal authorities 15 of the defendants convicted (by plea or trial) of felonies. Of the defendants so incarcerated, 8 of them confessed. Since all eight of these cases involved pleas of guilty, resumes thereof are not set out here.

Maryland.

CITY OF BALTIMORE
Charles E. Moylan, Jr., State's Attorney

Data compiled by John D. Hackett,
Assistant State's Attorney
1960 City Population: 939,024

Maryland, a common law state, lists many statutory felonies of other jurisdictions as misdemeanors, e.g., daytime and store house burglaries, both of which comprise a sizeable number of indictments in the City of Baltimore. Also many felony charges result in misdemeanor convictions under multiple-type indictments. Consequently, the separation of felonies and misdemeanors in the State of Maryland cannot afford a meaningful comparison with these classifications as employed in other states. In a number of files the records do not indicate whether a confession was used or not, as reflected by a sampling set out in the original data.

In Baltimore the guilty plea is infrequent; likewise, the jury trial is notably rare. Hearings are almost exclusively by the bench: it is possible for as many as four or five cases to be disposed of in one day by one judge and by one prosecuting attorney. The experience of the State's Attorney has been that the small number of guilty pleas have resulted from defense counsels' concern with defendants' stock claim in their petitions that counsel was "professionally incompetent."

1961: 638 Felony Prosecutions

Based on Review of All Felony Prosecutions

			Pleas of Guilty	Trials	Total
Convictions			210	300	510
Confessions			61	112	173
Relativity:	Confessions / Convictions		29%	37%	33.9%
Relativity:	Confessions / Prosecutions	198 / 638	—	—	30.9%
Relativity:	Confessions / Trials	137 / 428	—	32%	—

Defendants still incarcerated where confessions were used in their cases number 33.

Resumes of every 25th case of the 198 cases tried in which confessions were used (for a review of 8 cases) follow (cases selected reflect defendants still incarcerated which fall closest to the actual 25th case):

1. Case No. 682, William Holmes, then age 49, convicted of murder in the first degree, court trial, court appointed attorney, on December 18, 1961 (companion conviction for rape, sentence suspended). Sentenced to life imprisonment on January 5, 1962. No appeal taken. No eyewitness. Confession admits sexual intercourse, binding and gagging of victim, abandoning victim behind locked door, and returning in week's time to find the victim dead. Psychiatric examination completed pre-trial: diagnosis:—legally sane then, legally sane at time of trial.

2. Case No. 1535, Sylvester Alphonse Evans, then age 18, convicted of murder in the first degree on October 24, 1961, court trial, court-appointed attorney.

Sentenced to life imprisonment on March 16, 1962 in the Maryland Penitentiary. Motion for new trial, other court-appointed attorney, heard, denied. Appeal not taken. Defendant identified during trial. Confession admits joining group of youths in pool room, leaving en masse to punish others for "messing" with his sister, a confrontation of sister and victim, age 14, in front of ten friends and beating of victim by group. Confession also admits taking shot gun, on the following night to a "rumble" with victim's friends, chasing the victim and shooting as he fled down the alley. Defendant also admits an immediate change of clothing to avoid police detection.

3. Case No. 1031, Floyd Jorstad, then age 34, convicted on April 7, 1961, after pleading guilty to armed robbery of $2863.00 from bank teller, refused court appointed counsel. Sentenced to nine years in the Maryland Penitentiary on April 7, 1961. Four eyewitnesses identified defendant in police lineup and trial. Statement admitted, contains story of arrival in Baltimore City via freight car to study historical monuments, and makes no reference to bank hold up.

4. Case No. 2165, Paul D. King, then age 45, convicted of second degree murder on September 25, 1961, after entering guilty plea with retained attorney. Sentenced to 18 years in the Maryland Penitentiary on September 25, 1961. No appeal taken. Pre-trial psychiatric report: diagnosis—legally sane. One eyewitness identified defendant at trial. Confession admits slapping, chasing and shooting victim following argument in victim's home after evening date refusal. Defendant, a

longshoreman, also admitted carrying unlicensed gun at all times.

5. Case No. 2652, Emory McNeal, then age 37, convicted on August 9, 1961, of armed robbery, court trial, court-appointed attorney. Electroencephalograph studies ordered by court: diagnosis—no brain injury. Sentenced to 10 years in the Maryland Penitentiary on August 9, 1961. No appeal taken. Both cab driver victims identified defendant at trial. One confession admits hold up in attempt to get money for drink. Other confession admits drinking and "amnesia" concerning possession of leather pocket watch of victim.

6. Case No. 4080, James D. Clay, then age 27, convicted on December 11, 1961 of two cases of armed robbery and assault, court trial, court-appointed counsel, guilty plea. Sentenced to 20 years in the Maryland Penitentiary on December 11, 1961. No appeal taken. Both victims identified defendant at trial. The one confession admits planning with another and execution of robbery of one victim, a used-car office. Denial of weapon used with admission of hand in pocket and death threat. Other confession admits planning with two others, execution of robbery and beating of barber who resisted hold up trip.

7. Case No. 442, Matthew Forrester, then age 26, convicted on January 17, 1962 of mayhem and assault to rob, court trial, court-appointed attorney. Sentenced to ten years in the Maryland Penitentiary, after denial of motion for new trial, by another court-appointed attorney, on June 7, 1962. No appeal taken. Victim, who lost an eye and is deaf, identified defendant as one of four men who as-

saulted him, ripped off his trousers and fled scene with victim's money. Statement asserts defendant only offered victim handkerchief to stop face bleeding and carrying victim into tavern wash room, admits sharing loot taken from victim.

8. Case No. 4793, William Cole, then age 22, convicted on January 24, 1962, of armed robbery, court-appointed counsel. Sentenced to ten years in the Maryland Penitentiary on January 24, 1962. No appeal taken. Truck driver victim identified defendant on street at time of arrest and at trial. Confession admits planning with codefendant to "get some money", agreement to rob truck driver, concealed "gun" in coat pocket, beating of victim, flight and chase by police cruiser and admission of lies to conceal identity when first questioned.

Michigan.

WAYNE COUNTY, Detroit
Samuel H. Olsen, Prosecuting Attorney

Data compiled under the direction of Samuel J. Torina, Chief Appellate Attorney, by the Criminal Investigation Division, Detroit Police Department

1960 County Population: 2,666,297

1961: 1445 PROSECUTIONS.

Crime	Prosecution	Conviction	Confession	Relativity: Confession/ Prosecution
Unlawful driving away auto and possession of stolen auto	392	270	233	52%
Uttering & publishing; larceny over $100 (shoplifting)	337	331	241	71.5%
Homicide	115	105	61	53%
Narcotic violations	240	197	124	51.7%
Kidnapping, extortion, arson, larceny by trick	24	5	7	29%
Robbery	181	170	148	81.7%
Burglary	62	60	40	64.5%
Forcible rape	74	56	18	24%
Carrying concealed weapon; possession of burglar tools; receiving and concealing stolen property over $100	20	18	7	35%
Total	1445	1216	879	60.8%

Minnesota.

HENNEPIN COUNTY, Minneapolis
George M. Scott, County Attorney

Data compiled by Donald J. Omodt, Assistant County Attorney with the assistance of Charles Rogers, Investigative Clerk, County Attorney's Office

1960 County Population: 842,854

In 1961, felony dispositions totaled 658. There were 593 pleas of guilty entered; in a sampling of 1 out of 20 cases (30 cases checked), the ratio of confessions to convictions was 86.7%. A total of 65 cases were tried: 50 convictions and 14 acquittals. A sampling of 35 of these cases revealed a confession to conviction ratio of 80.7% and a confession to prosecution ratio of 80%.

The following two charts disclose the detail of the samplings:

PLEAS OF GUILTY.

Type of Crime	Cases	Signed Confession	Oral Confession	Exculpatory Statement	Defendant Stood Silent	Defendant Still Incarcerated
Robbery	12	9		1	2	5
Rape	1	1				1
Narcotics	3	3				0
Assault	2	1	1			0
Indecent Assault	1				1	0
Murder	3	3				2
Sodomy	3	2		1		0
Carnal Knowledge	2	1			1	1
Arson	1	1				1
Abortion	2	1		1		0
	30	22	1	3	4	10

TRIALS—COURT OR JURY

Type of Crime	Number of Trials	Found Guilty by Court or Jury	Acquitted	Signed Confession	Oral Confession	Exculpatory Statement	Defendant Stood Silent	Totals	Defendant still Incarcerated
Robbery	3	3		*1/0		2/0		3/0	2
Grand Larceny	5	4	1	1/0	1/1	1/0	1/0	4/1	0
Forgery	4	4		1/0	1/0		2/0	4/0	0
Using Auto	2	1	1			1/1		1/1	1
Swindling	1	1				1/0		1/0	0
Burglary	9	5	4	0/1	0/1	4/1	1/1	5/4	3
Rape	5	5		1/0	1/0	3/0		5/0	1
Narcotics	1	1			1/0			1/0	0
Assault	1		1	0/1				0/1	0
Insufficient Fund Checks	1	1					1/0	1/0	0
Criminal Negligence	1	1			1/0			1/0	0
Indecent Assault	1		1			0/1		0/1	0
Bribery	1		1				0/1	0/1	0
	35	26	9	4/2	5/2	12/3	5/2	26/9	7

* Above the slanted line indicates "of the number found guilty"; below the slanted lines indicates "of the number acquitted."

New Jersey.

ESSEX COUNTY, Newark
Brendan T. Byrne, County Prosecutor

Data compiled under the direction of Barry H. Evenchick, Assistant County Prosecutor by Charles H. Acocella, County Investigator and Evan E. Miles, County Detective, both on the staff of the County Prosecutor

1960 County Population: 923,545

1961: SAMPLING OF 100 CASES

			Pleas of Guilty	Trials	Total
Convictions			59	29	88
Confessions			55	18	73
Relativity:	Confessions / Convictions		93%	62%	82.9%
Relativity:	Confessions	77			
	Prosecutions	100	—	—	77%
Relativity:	Confessions	22			
	Trials	41	—	—	53.6%

A chart detailing the review of each individual case is filed in the Office of the Clerk of the Supreme Court.

New York.

KINGS COUNTY, Brooklyn

Aaron E. Koota, District Attorney

Data compiled under the direction of Elliott Golden, Chief Assistant District Attorney, by Ronald B. Bianchi, Assistant District Attorney

1960 County Population: 2,627,319

Number of felony dispositions in 1961:		3334
Number of defendants convicted	2890	
Number of pleas of guilty	2695	
Number of trials (195 convictions; 217 acquittals)	412	

1961: 3107 FELONY PROSECUTIONS

Based Upon Sampling of Every 25th Case

		Pleas of Guilty	Trials	Total
Convictions		108	8	116
Confessions		51	0	51
Relativity: Confessions / Convictions		47%	0%	44%
Relativity: Confessions / Prosecutions	53 / 125	—	—	42.4%
Relativity: Confessions / Trials	2 / 17	—	—	11.8%

Of the 108 pleas of guilty, the records indicated 51 confessions, 43 no confessions, 14 no data available. This again shows that the percentage of confessions is low because it is probable that in some of the cases wherein no data was available confessions were involved. In the 8 trial convictions, the files showed 7 without a confession and 1 with

Ohio.

HAMILTON COUNTY, Cincinnati
Melvin G. Rueger, Prosecuting Attorney

Data compiled by Assistant Prosecuting Attorneys

1960 County Population: 864,121

The data was obtained by Mr. Rueger's assigning the review of the 1961 felony cases to members of his staff.

In a count of 1035 felony dispositions, there was a combined conviction figure of 926 (220 by trials; 706 by guilty pleas); furthermore, there were 667 extrajudicial confessions involved in the total felony count, being 64.4% of these cases.

Ohio.

MONTGOMERY COUNTY, Dayton
Lee C. Falke, Prosecuting Attorney

Data compiled by Walter H. Rice,
Assistant Prosecuting Attorney
1960 County Population: 527,080

There were 756 felony dispositions, but data regarding confessions as to those cases dismissed, nol-prossed, etc. is not available.

1961: 680 FELONY PROSECUTIONS[1]
Based on Review of All Felony Prosecutions

			Pleas of Guilty	Trials	Total
Convictions			629	30	659
Confessions			483	13	496
Relativity:	Confessions / Convictions		76.8%	43.3%	75%
Relativity:	Confessions / Prosecutions	502 / 680	—	—	73.8%
Relativity:	Confessions / Trials	19 / 50	—	—	38%

1. Pleas of Guilty (629) plus Trials (51).

1961: 51 TRIALS (JUDGE OR JURY)

Based on Review of All Cases Tried

	Total	Confessions Employed	Percentage of Confessions
Convictions	30	13	43.3%
Acquittals	21	6	28.6%
Percentage of Convictions	58.8%	68.4%	—

There remain incarcerated 6 defendants convicted at trials (judge or jury) through the use of confessions; a resume of these cases follows:

1. Case 22434, Billy Joe Humphrey, age 33 years—convicted on May 3, 1961 by a three-judge panel, of murder in the first degree while perpetrating a Robbery; sentenced to life imprisonment in the Ohio State Penitentiary. Defendant gave full written statement which explained all details and corroborated dying declaration of complainant.
2. Case 22459, Ben G. Holston, age 38 years—convicted on August 11, 1961 by a jury, of Murder in the first degree, with a recommendation of mercy; sentenced to life imprisonment in the Ohio State Penitentiary. Defendant gave full written statement, corroborating all details of witnesses and explaining all elements of shooting.
3. Case 22541, Raymond Byrd, age 33 years—convicted on July 7, 1961 by a jury, of armed robbery; sentenced to a term of 10-25 years in the Ohio State Penitentiary. Defendant gave full written statement which corroborated complaining witness' testimony. Defendant was on parole at the time of offense.
4. Case 22752, Alonzie Phillips, age 32—convicted on

November 29, 1961 by a jury, of armed robbery; sentenced to 10-25 years in the Ohio State Reformatory. Defendant gave full written statement concerning this and other armed robberies; said statement corroborated testimony of the complaining witness.

5. Case 22730, Ronald Edwin Lawson, age 21 years—convicted on September 12, 1961 by a jury, of operating a motor vehicle without the owner's consent; sentenced to a term of 1-20 years in the Ohio State Reformatory. Defendant gave oral statement corroborating the testimony of an accomplice. Defendant was on parole at the time of the offense.
Note: Defendant was released on parole in 1963 but returned as a parole violator on July 7, 1964 and is presently incarcerated.

6. Case 22489, Paul Edward Coble, age 30 years—convicted on October 17, 1961, by a jury, of Grand Larceny; sentenced to a term of 1-7 years in the Ohio State Reformatory; said jury verdict was affirmed on appeal. Defendant gave full written statement which corroborated accomplice testimony. Defendant was on parole at time of offense.
Note: Defendant was released on parole in 1963 but returned as a parole violator in May of 1965 and is presently incarcerated.

Pennsylvania.

PHILADELPHIA COUNTY, Philadelphia
James C. Crumlish, Jr., District Attorney (to 12/31/65)
Arlen Spector, District Attorney (effective 1/1/66)

Data compiled under the direction of
Richard A. Sprague, Chief Assistant District Attorney, Prosecution Department, by the County Detectives Staff of the Office of the District Attorney

1960 County Population: 2,002,512

In a review of 376 cases in which defendants were convicted of a crime and sentenced to a term of imprisonment of at least two years, confessions were obtained in 189 of these cases. The percentage of confessions in such cases is 50%.

JUDGES' RULES [1964] 1 ALL. E. R. 237-239.

(Note: In [1964] All England Reports 237-240, coverage of the latest Judges' Rules (effective January 27, 1964) have been reported by N. P. Metcalfe as coming from Home Office Circular No. 31/1964, dated January, 1964, in a pamphlet entitled "Judges' Rules and Administrative Directions to the Police." Footnote (2) is set out verbatim except for deletions which refer to other footnotes. The complete unabridged Judges' Rules, as given in said Reports, are also included. Appendix B which is entitled "Administrative Directions on Interrogation and the Taking of Statements," involving the interpretation and directives from the Home Office is not reproduced in this brief.)

"(2) A note printed before the Judges' Rules in Appendix A in the pamphlet . . . explains that the judges control the conduct of trials and the admission of evidence against persons on trial before them, but do not control or in any way initiate or supervise police activities or conduct. The rules do not purport to deal with many varieties of conduct which might render answers and statements involuntary and therefore inadmissible, but deal merely with particular aspects of the matter. . . .

"Appendix A, in the introduction before the terms of the Rules are set out, contains the following statement: 'These Rules do not affect the principles (a) that citizens have a duty to help a police officer to discover and apprehend offenders; (b) that police officers, otherwise than by arrest, cannot compel any person against his will to come to or remain in any police station; (c) that every person at any stage of an investigation should be able to communicate and to consult privately with a solicitor. This is so even if he is in custody provided that in such a case no unreasonable delay or hindrance is caused to the proc-

esses of investigation or the administration of justice by his doing so; (d) that when a police officer who is making inquiries of any person about an offense has enough evidence to prefer a charge against that person for the offense, he should without delay cause that person to be charged or informed that he may be prosecuted for the offence; (e) that it is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression.

'The principle set out in para. (e) above is overriding and applicable in all cases. Within that principle the Judges' Rules are put forward as a guide to police officers conducting investigations. Non-conformity with these rules may render answers and statements liable to be excluded from evidence in subsequent criminal proceedings.' "

JUDGES' RULES.

"1. When a police officer is trying to discover whether, or by whom, an offense has been committed he is entitled to question any person, whether suspected or not, from whom he thinks that useful information may be obtained. This is so whether or not the person in question has been taken into custody so long as he has not been charged with the offence or informed that he may be prosecuted for it.

"2. As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions, or further questions, relating to that offence.

The caution shall be in the following terms:

'You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence.'

"When after being cautioned a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any such questioning or statement began and ended and of the persons present.

"3. (a) Where a person is charged with or informed that he may be prosecuted for an offence he shall be cautioned in the following terms:

'Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence.'

"(b) It is only in exceptional cases that questions relating to the offence should be put to the accused person after he has been charged or informed that he may be prosecuted. Such questions may be put where they are necessary for the purpose of preventing or minimising harm or loss to some other person or to the public or for clearing up an ambiguity in a previous answer or statement.

Before any such questions are put the accused should be cautioned in these terms:

'I wish to put some questions to you about the offence with which you have been charged (*or* about the offence for which you may be prosecuted). You are not obliged to answer any of these questions, but if you do the questions and answers will be taken down in writing and may be given in evidence.'

Any questions put and answers given relating to the offence must be contemporaneously recorded in full and

the record signed by that person or if he refuses by the interrogating officer.

"(c) When such a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any questioning or statement began and ended and of the persons present.

"4. All written statements made after caution shall be taken in the following manner: (a) If a person says that he wants to make a statement he shall be told that it is intended to make a written record of what he says. He shall always be asked whether he wishes to write down himself what he wants to say; if he says that he cannot write or that he would like someone to write it for him, a police officer may offer to write the statement for him. If he accepts the offer the police officer shall, before starting, ask the person making the statement to sign, or make his mark to, the following:

'I, ..., wish to make a statement. I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence.'

"(b) Any person writing his own statement shall be allowed to do so without any prompting as distinct from indicating to him what matters are material.

"(c) The person making the statement, if he is going to write it himself, shall be asked to write out and sign before writing what he wants to say, the following:

> 'I make this statement of my own free will. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence.'

"(d) Whenever a police officer writes the statement, he shall take down the exact words spoken by the person

making the statement, without putting any questions other than such as may be needed to make the statement coherent, intelligible and relevant to the material matters; he shall not prompt him.

"(e) When the writing of a statement by a police officer is finished the person making it shall be asked to read it and to make any corrections, alterations or additions he wishes. When he has finished reading it he shall be asked to write and sign or make his mark on the following certificate at the end of the statement:

> 'I have read the above statement and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it of my own free will.'

"(f) If the person who has made a statement refuses to read it or to write the above mentioned certificate at the end of it or to sign it, the senior police officer present shall record on the statement itself and in the presence of the person making it, what has happened. If the person making the statement cannot read, or refuses to read it, the officer who has taken it down shall read it over to him and ask him whether he would like the correct, alter or add anything and to put his signature or make his mark at the end. The police officer shall then certify on the statement itself what he has done.

"5. If at any time after a person has been charged with, or has been informed that he may be prosecuted for an offence a police officer wishes to bring to the notice of that person any written statement made by another person who in respect of the same offence has also been charged or informed that he may be prosecuted, he shall hand to that person a true copy of such written statement, but nothing shall be said or done to invite any reply or comment. If that person says that he would like to make a statement in reply,

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 759

ERNESTO A. MIRANDA,

Petitioner,

vs.

THE STATE OF ARIZONA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

BRIEF FOR RESPONDENT

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IN THE SUPREME COURT OF THE UNITED STATES

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THE STATE OF ARIZONA,

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

BRIEF FOR RESPONDENT

OPINION BELOW, JURISDICTION, CONSTITUTIONAL PROVISIONS INVOLVED.

Pursuant to Rule 40, Subd. 3, Rules of the Supreme Court, 28 U.S.C. Rules, as amended, the respondent accepts petitioner's presentation of the above referenced portions of the brief.

QUESTION PRESENTED

While your respondent accepts the legal substance of the Question Presented as posed by the petitioner,

serious issue is taken with the descriptive phrases, "poorly educated, mentally abnormal".[1] The propriety of this description of the petitioner, insofar as it may enhance the question presented for review, is no doubt one of the key issues to be decided by the Court and respondent reserves the right to present argument, *infra,* concerning the description's accuracy and impact.

STATEMENT OF THE CASE

Pursuant to Rule 40 of this Court, *supra,* respondent deems it necessary to set forth additional facts from the record of this case which are considered essential to the complete resolution of the issues presented for review.

A psychiatric report is part of the record (R. 6) and has been referred to by petitioner in his Statement of the Case.[2] The totality of this report is essential for an adequate determination of critical factual and background matters, and the report is therefore fully incorporated by reference into this Statement of the Case and reprinted verbatim in Appendix A, *infra.*

The psychiatrist quoted the petitioner as making the following statements:[3]

"Don't worry. If I had wanted to rape you, I would have done it before. [R. 7]

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[1] Brief of Petitioner, at 2.

[2] Id. at 3.

[3] These are in addition to those quoted responses to proverbs cited in petitioner's brief, Id. n. 1.

"You don't have to scream. I am not going to hurt you. [R. 7]

"I didn't know how to ask her for forgiveness. [R. 7]

"I never could get adjusted to her. [R. 8]"

The psychiatrist sets forth in detail Miranda's experience with law enforcement agencies.[4] (R. 8)

Petitioner made a written statement concerning the events in question (State's Exhibit 1; R. 41, 69). Petitioner makes selected references to the statement.[5] Respondent incorporates the whole of this written instrument into this brief; it is reprinted herein as Appendix B, *infra.*

A portion of the statement was typewritten and part of it was written in long-hand by the petitioner himself (R. 40, 41). The following portion of the statement was actually written by the petitioner in his own hand:

"E.A.M. Seen a girl walking up street stopped a little ahead of her got out of car walked towards her grabbed her by the arm and asked to get in the car. Got in car without force tied hands & ankles. Drove away for a few miles. Stopped asked to take clothes off. Did not, asked me to take her back home. I started to take clothes off her without any force and with cooperation. Asked her to lay down and she did

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[4] 1) Aged 14, Stolen Car, Probation.
2) Three weeks later, Fort Grant (Arizona Industrial School for Boys), 6 months.
3) Assault and Attempted Rape, 1 year sentence.
4) Aged 17, Peeping Tom charge, Los Angeles, Probation.
5) Arrested twice, Los Angeles, Suspicion of Armed Robbery.
6) Military service, Peeping Tom charge, confinement and Undesirable Discharge.
7) December 1959, Dwyer Act Violation, Federal Penitentiary.

[5] Brief of Petitioner, n. 3.

principles therein announced, considered within the context of that decision as it discusses not only the particular facts of the case but also the significance of the prior decisions of this Court on the same subject matter, implement an exclusionary rule directed to deter the police from affirmative conduct calculated, under the facts of any given case, to deny an accused from consulting with counsel. Such a rule, in proper perspective and balance, will protect the accused from any infringement of his right to counsel, while not unduly or unnecessarily curtailing the oft times essential investigative questioning of a suspect.

ARGUMENT

I

INTRODUCTION

Petitioner states that his life for all practical purposes was over when he walked out of Interrogation Room #2 on March 13, 1963.[8] The real fact is that Miranda's life was unalterably destined ten days earlier during the late evening hours of March 2 and the early morning hours of March 3, when he kidnapped and raped his victim, Patricia Wier. What followed must not be described in cynical terms as "the ceremonies of the law";[9] they were, and are, the carefully ordained processes of our judicial system, designed, at the optimum, to discover the truth, mete out justice to all, insure the guilty their just and proper recompense and vindicate the innocent. To be sure,

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[8] Brief of Petitioner, at 10.

[9] Ibid.

thoroughly interwoven into these processes at all stages and levels is the implementation and zealous protection of those cherished rights and privileges guaranteed to all by the Constitutions of the United States and the several states; no police officer, prosecutor or judge dedicated to the basic precepts of our system of government advocates that it should be any different.

Unfortunately, or perhaps fortunately, so long as human beings rather than computers administer the processes of justice, mistakes and error will occur and injustices will be done. The courts of our land, including this Court with its highest and most final jurisdiction, are daily exposing and correcting these mistakes to the best of their ability. The question here before the Court is whether there was such a mistake or error in this case of a dimension to result in the denial of petitioner's right to counsel as set down in the Constitution of the United States, and as proclaimed by this Court in its decisions thereunder.

II

THERE ARE NO INHERENT DEFECTS EITHER IN THIS DEFENDANT, THE OPERATION OF LAW ENFORCEMENT AGENCIES, OR IN OUR SYSTEM OF CRIMINAL JUSTICE, WHICH REQUIRE A RULE OF THE CONSTITUTIONAL IMPACT AND PROPORTIONS HERE SOUGHT BY PETITIONER.

A. THE DEFENDANT.

The very description of the petitioner in his Question Presented[10] subtlely introduces a factual issue into

[10] Id. at 2.

this case which is of the gravest importance in resolving the ultimate legal question.

The words so carefully used were "poorly educated, mentally abnormal". No doubt other descriptive words and phrases could have been added—poor, motherless, unloved, downtrodden, culturally deprived, misguided, unguided, harassed, *ad infinitum.*

It is practically impossible to pick up a national magazine, professional journal, or listen to an address without some dramatice usage of these descriptive adjectives to characterize some greater or lesser portion of the American population.[11] And in the proper perspective, such attention, whether it be by this Court,[12] the Congress,[13] the executive,[14] or state and local governments,[15] is long overdue and, hopefully, will do something about the root-source of our most perplexing problems—not the least of which is the rising crime rate.[16]

However, to use these heart-rending descriptions in an attempt to justify or excuse the knowing and deliberate violation of our criminal statutes and the im-

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[11] E.g. **Nine "Unadoptable" Children Joined by Love,** Look Magazine, Oct. 19, 1965, at 54; **Winters, Counsel for the Indigent Accused in Wisconsin,** 49 Marq. L. J. 1 (1965); Inaugural Address of President John F. Kennedy, January 20, 1961, 107 Congressional Record, 1013.

[12] E.g. **Brown v. Board of Education,** 347 U.S. 483 (1954).

[13] E.g. Public Works and Economic Development Act of 1965, 42 U.S.C. §§3121-3226.

[14] E.g. State of the Union Address, President Lyndon B. Johnson, January 12, 1966, 112 Congressional Record 129.

[15] E.g. Operation LEAP (Leadership and Education for the Advancement of Phoenix), Ordinance No. S-3205, Dec. 15, 1964, City Council of Phoenix, Arizona, Implementing Resolution No. 11887, November 4, 1964.

[16] E.g. Hoover, **Annual Report of the Federal Bureau of Investigation, Fiscal Year 1965,** U.S. Department of Justice.

position of violence and suffering and depravation upon some individuals of our society by others, is misleading to say the least. Of this ilk, Miranda is a clear example.

Perhaps an eighth grade education, under a literal definition of the term and in the context of our affluent society, is a "poor education". Under no stretch of the imagination, however, can Miranda be deemed to be uneducated or illiterate. In addition to his formal schooling, petitioner had considerable and varied experiences which broadened his knowledge, particularly in the area which is of primary importance to us now.[17]

Counsel would have us believe that petitioner was incapable of producing the statement which was admitted against him (Appendix B. *infra*).[18] A simple reading and viewing of the statement refutes such a contention. The portion of the statement describing the actual events of the incident is in petitioner's hand and was written by him. Certainly the officers, if they were interested in putting words into Miranda's mouth, could have typed in these words also, in a favorable context, and simply obtained Miranda's signature to the whole. And although petitioner's grammar, sentence structure and punctuation leave much to be desired, the conclusion is inescapable that his knowledge and understanding of the difference between simple promiscuity and the crime of rape is more highly sophisticated than most of the Ph.Ds in our country.[19]

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[17] See n. 4, **supra**.

[18] Brief of Petitioner, n. 3.

[19] Note petitioner's careful use of the words "without force", "without force and with cooperation", "asked her to lay down, and she did". Appendix B, **infra**. See also petitioner's quoted sentence responses, statement of the case, **supra**, at 2.

Miranda is also labeled as "mentally abnormal". The basis for this is the psychiatric report (Appendix A, *infra*). While Miranda had an "emotional illness", it is questionable that this even made him "abnormal".[20] Clearly the diagnosis of the psychiatrist was to the effect that the illness was not disabling and that Miranda was able to understand the predicament he was in and knew the conduct society demanded of him at the time he chose to ignore those demands.[21]

B. THE POLICE

Admittedly there is no possible element of police brutality or coercion in this case, whether direct or subtle.[22] Yet petitioner, nevertheless, paints a picture of police disregard for rights guaranteed by our Constitution. The picture is inaccurate—but proving it so is almost a practical impossibility.

The articles, the studies, and the cases,[23] dealing, as they almost unanimously do, with the negative aspect of the problem, make it difficult to see the rule because of the emphasis on the exception. It is true that all

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[20] It has been estimated that at least 10% of our entire population have emotional illnesses of one type or another which should be treated professionally. Milt, **How to Deal With Mental Problems,** (National Association for Mental Health, Booklet, 1962).

[21] "It is my opinion that Mr. Mirande [sic] is aware of the charges that have been brought against him and is able to cooperate with his attorney in his own defense. Although Mr. Mirande [sic] has an emotional illness, I feel that at the time the acts were committed that he was aware of the nature and quality of the acts and that he was further aware that what he did was wrong." Appendix A, **infra.**

[22] Brief of Petitioner, at 10.

[23] E.g. LaFave, **Detention for Investigation by the Police: An Analysis of Current Practices,** 1962 Wash. U.L.Q. 331;

Smith, **Police Systems in the United States,** (2d rev.ed. 1960); **Ashcraft v. Tennessee,** 322 U.S. 143 (1944).

police officers are not interested in protecting the rights of the accused; it is true that there are convictions obtained by use of trumped-up evidence and wrongfully elicited incriminating statements and confessions; but these are the very few exceptions to the general rule. For every case of police insensitivity to individual rights, there are literally thousands of unreported incidents of the unstinting efforts of police and prosecutors which result in the extrication of an otherwise helpless and innocent victim, hopelessly intertwined in a web of circumstantial evidence of guilt.[24] The prime reason the vast majority of such instances go unreported and unstatisticized, is that the police and the prosecutor alike consider this just another important, but routine part of their work, which they do with the same dedication as they do the more spectacular phases.[25]

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[24] A person cannot talk to a police officer or prosecutor of many years tenure without hearing of numerous such incidents, many made possible by not only investigating extrinsic physical facts, but also by investigative questioning.

[25] The Law Enforcement Code of Ethics, as set forth in The Detroit Police Manual, and cited in Norris, **Constitutional Law Enforcement is effective Law Enforcement:** [Etc.], 43 U. Det. L. J. 203 (1965), n. 30, clearly reflects the importance of this particular responsibility, and represents the rule and not the exception:

"Law Enforcement Code of Ethics

As a Law Enforcement Officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all men to liberty, equality and justice.

I will keep my private life unsullied as an example to all, maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officously or permit personal feelings, prejudices, animosities, or friendships to influence my decisions. With no com-

This Court, together with all the courts of our land, should and will continue to firmly and courageously deal with the exceptions to this rule. We must be careful, however, not to foreclose, limit or unduly hamper investigative techniques which, in their legitimate use, are not barred by any Constitutional mandate, solely because a few use the techniques to effect an unconstitutional result. The promulgation of such a rule of constitutional dimension in any given case would be as necessary as "Dr." Jerry Colona's recently suggested solution to Bob Hope's medical problem of a sore and infected big toe—to cut off Hope's head to relieve the execss weight on the toe.[26] While it goes without saying that the problem of the big toe would most certainly be forever solved, it is questionable whether the patient would be at all happy with the ancillary side effects of the treatment. As to whether a similarly undesirable side effect would be forthcoming from an unnecessarily broad constitutional rule in this case, we must look ahead.

C. THE NATURE OF THE CONTEST.

Petitioner, it seems, would have us interpret our adversary system of criminal justice as giving the ac-

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promise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to hold so long as I am true to the ethics of police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession—Law Enforcement."

[26] Bob Hope Christmas Special, N.B.C. Television Network, January 26, 1966, 8:30 P.M., M.S.T.

cused a right to "win" the contest.[27] While it may be inherent in the very nature of our system, with its vital and essential safeguards to individual freedom, that a person who actually commits a criminal act may have extra opportunities to escape punishment for his crime, it must be clear without comment or citation that the intent of the Constitutional safeguards were to insure, as much as humanly possible, that the innocent and unpopular would not be wrongfully harassed, intimidated or convicted—not that the guilty should have any special chances for acquittal or other favorable result.

If the prosecuting authorities have gained an overwhelming advantage over a particular defendant, assuming they have done so by proper methods, and not by violating any of his constitutional rights, this is to be highly commended, not condemned. It is a vital attribute of our society that the law enforcement machinery apprehend, convict and punish and/or rehabilitate those who would break the laws and endanger, if not destroy, our domestic tranquility. Law enforcement is not a game of chance, *Massiah v. United States,* 377 U.S. 201, 213 (1964) (Dissenting Opinion); *McGuire v. United States,* 273 U.S. 95 (1927). There is no "gamesmanship" or "sportsmanship" involved here, at least insofar as the criminal is concerned. He follows no code of conduct or canons of ethics. The death, suffering, and depravation caused by crime is as real to those who are touched by its sting as is that of any war ever fought. Certainly the criminal gives no quarter; and none should be given in return except as is required to insure the integrity and continuation of the system which we all cherish.

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[27] Brief of Petitioner, at 9.

Criminals, like the rest of us, are inherently unequal. Some are skilled, some not; some intelligent, some not; some trained, some not; some blabbermouths, some not; some strong, some not; some cruel, some not, etc. It certainly would not be urged that if a criminal is foolish enough to leave physical clues, the police should not be allowed to use them because X, who committed the same crime, was more careful. Or if Y was callous enough, or "intelligent" enough, to kill his rape victim to prevent identification, certainly Z, who also raped, should not be given the same opportunity to kill so as to have an equal chance at the trial to "win". So, too, are there differences between what happened to Ernesto A. Miranda as contrasted with what happened to Danny Escobedo[28] which militate in favor of a different resolution of their problem by this Court.

III

MIRANDA WAS NOT DENIED HIS RIGHT TO COUNSEL AS GUARANTEED TO HIM BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

The decision in this case must rest upon the scope and effect to be attributed to this Court's decision concerning right to counsel at the interrogation stage, in *Escobedo v. Illinois,* 378 U.S. 478 (1964). While petitioner's historical analysis is to be highly commended for the care and effort which it reflects, his almost cursory treatment of *Escobedo,* coupled as it is with an

[28] Escobedo v. Illinois, 378 U.S. 478 (1964).

inaccurate treatment of the Arizona Court's decision in the instant case, belies some doubt as to the absolute accuracy of the conclusion forecast as unassailable. Rather than obscuring the "simple lines of the situation",[29] the welter of the cases, the majority of which disagree with petitioner's conclusion,[30] coupled with the rather sharp divergence of opinion on this Court, not only in the recent decisions on this point, eg., *Massiah v. United States,* 377 U.S. 201 (1964) and *Escobedo v. Illinois, supra,* but in the earlier decisions as well, e.g., *Crooker v. California,* 357 U.S. 433 (1958) and *Cicenia v. LaGay,* 357 U.S. 504 (1958), indicate the problem posed here to be anything but simple.

A. THE ARIZONA COURT'S DECISION.

Petitioner, at least twice,[31] states that the Arizona Supreme Court rested its opinion on petitioner's refusal to request counsel. A reading of the opinion clearly reveals that this was only one factor in many which resulted in a determination that Miranda was not denied his right to counsel (Statement of the Case, *supra,* at 4). The nature and length of the questioning, the warning advice given, and the background of the petitioner were equally important factors. Petitioner is correct in stating that the Arizona Court's decision did not in any way purport to rest on a waiver doctrine.[32] This is made amply clear in the Arizona

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[29] Brief of Petitioner, at 28.

[30] For an exhaustive citation of the cases construing **Escobedo**, both on a State and Federal level, see: Sokol, **Brief of Amicus Curiae in The Escobedo Cases**, (The Michie Company, 1966).

[31] Brief of Petitioner, at 6, 30.

[32] Id, nn. 7 and 15.